
UNIFORMITY DEVELOPMENTS

MTC UNIFORMITY COMMITTEE – STAFF REPORT

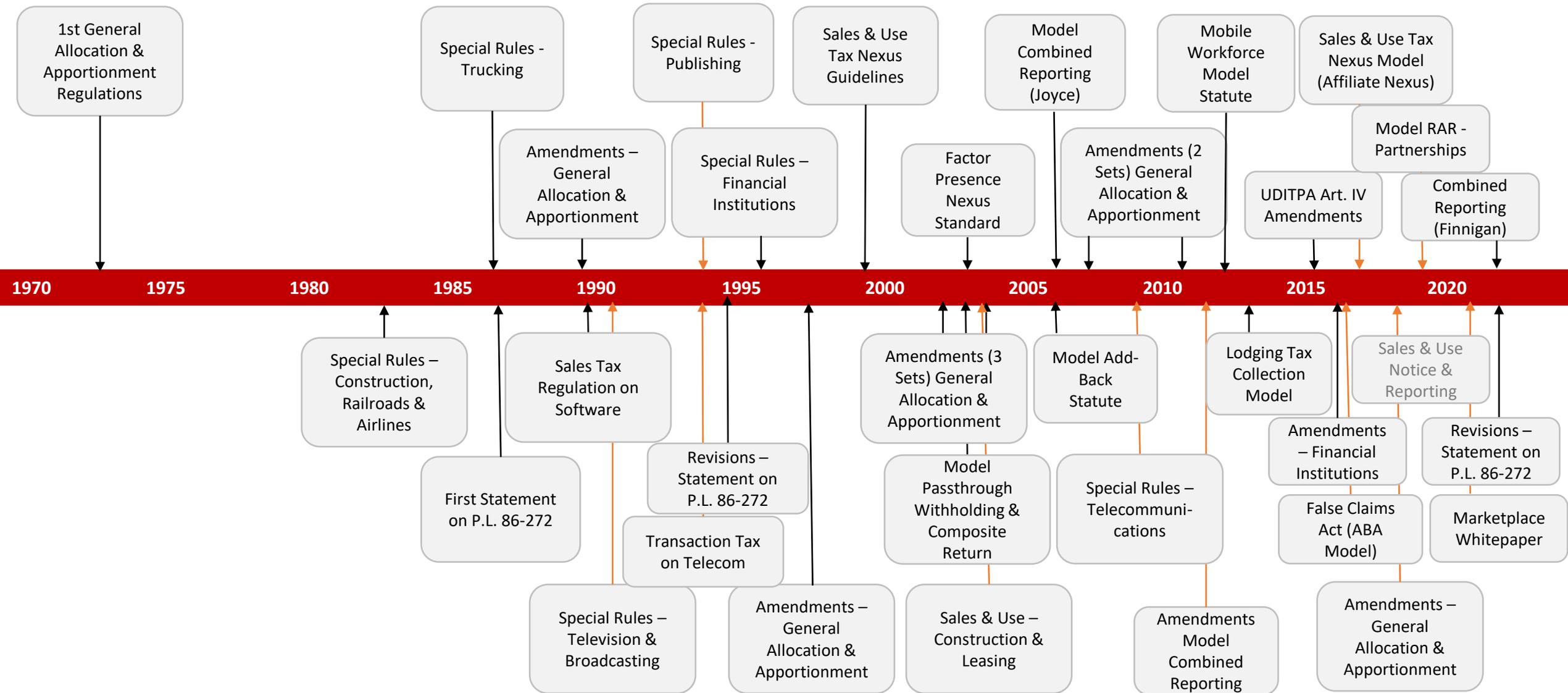
NOVEMBER 9, 2021



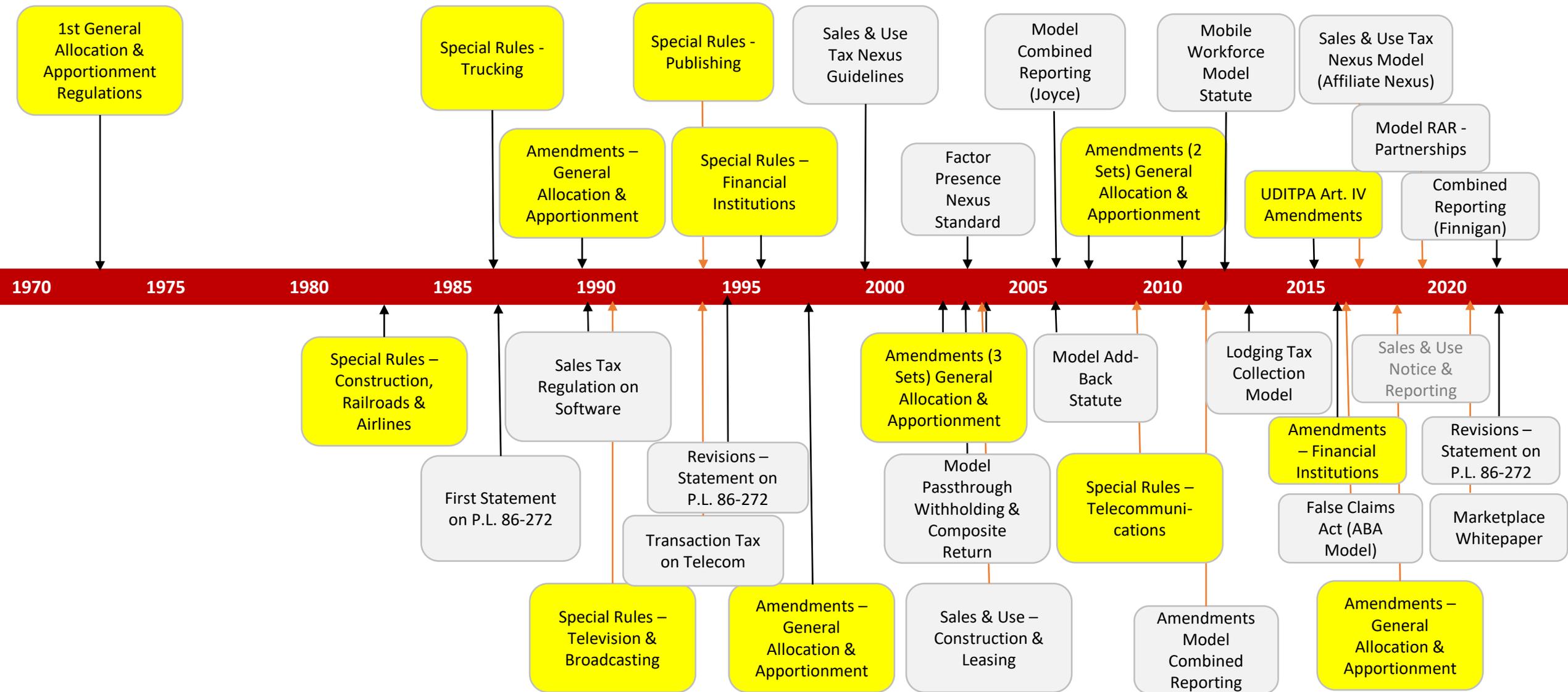
MULTISTATE TAX COMMISSION



MTC Uniformity – Long View (Just Highlights)



MTC Uniformity – Long View (Just Highlights)





MTC UNIFORMITY – FIRST PRIORITY

Allocation and
apportionment of
multistate income



MAJOR APPORTIONMENT CHANGE - FROM COP TO MBS

States continue to transition from cost-of-performance to market-based sourcing for receipts from services and intangibles

Only 11 states now continue to use COP sourcing

Recent developments at the international level are also focusing on market-based sourcing of certain income

DST'S SHED LIGHT IN MBS RULES

- MTC MBS rules (and long-standing publishing and broadcasting rules) use “look-through” sourcing for advertising.
- In State Tax Notes webinar, in which the MTC General Counsel, Nancy Prosser, participated, Doug Lindholm, head of the Council On State Taxation (COST), criticized DSTs, particularly digital ad taxes like Maryland’s saying:
 - “Finally — and I referenced Nancy’s — the MTC’s — section 17 regs that move states to market— more and more states — I think we’re up to around 33 — impose market [sourcing] which sources the sale of advertising services specifically to the location of the customer. So, Maryland can indeed get to this income from these big companies. . . . In effect, what’s going on since the state corporate income tax rules have adapted and evolved to address the business model . . .”

DST'S SHED LIGHT IN MBS RULES

- Mr. Lindholm also cites an article by COST staff which notes:
 - “Many different and inconsistent justifications are provided for state adoption of DSTs . . . state corporate income tax systems – virtually alone among national or subnational corporate income tax systems in the world – widely adopt economic nexus and *market sourcing rules that facilitate the taxation of digital-only businesses and obviate the need for state DSTs.*”
- In other words – even COST agrees that proper market-based sourcing would source digital ads and some related digital services on a “look-through” basis as both MTC rules and the MD tax on gross receipts would.



WHAT'S NEXT

- Training
- Regulation clean up?
- Watching what happens at the international level
- Watching what happens in the transactional tax area

LONG VIEW - SALES TAXATION OF DIGITAL PRODUCTS

- 1967 - *National Bellas Hess*
- 1988 - MTC Model on Taxation of Software
- 1992 - *Quill*
- 1993 - MTC Principles for Telecom Transaction Taxes
- 1999 - Streamlined Sales and Use Tax Project begins
- 2016 - MTC Sales Tax Nexus Model (affiliate nexus)
- 2014 - 2018 MTC Use Tax Notice & Information Reporting (tabled)
- 2018 - *Wayfair*



RECENT DEVELOPMENTS – DIGITAL PRODUCTS

- Sales & Use Taxes
 - Colorado – Enacted HB 21-1312 - adds “digital goods” to the statutory definition of “tangible personal property” subject to sales and use tax codifying the position of the DOR.
 - Maryland – Enacted HB 932 (2021) – Includes certain digital products in sales tax base.



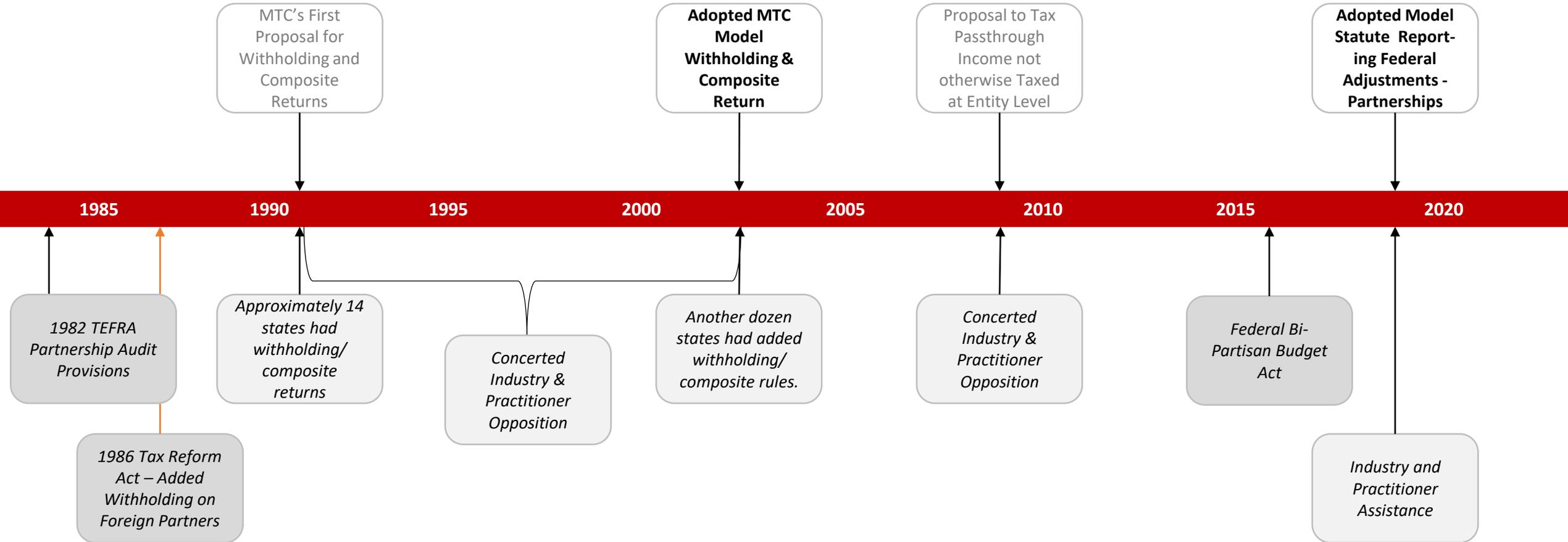
RECENT DEVELOPMENTS – DIGITAL PRODUCTS

- Sales & Use Taxes
 - Legislative proposals to expand sales & use taxes –
 - Georgia
 - Kansas
 - South Carolina
 - Utah
 - Wyoming
 - Other guidance –
 - Hawaii (Tax Information Release 2021-06 - software)
 - North Carolina (Tax Information Release 2021-06 – educational related products)
 - Washington – educational related products
 - Wisconsin
 - West Virginia
- Streamlined is working on how to source digital products when the seller has insufficient information

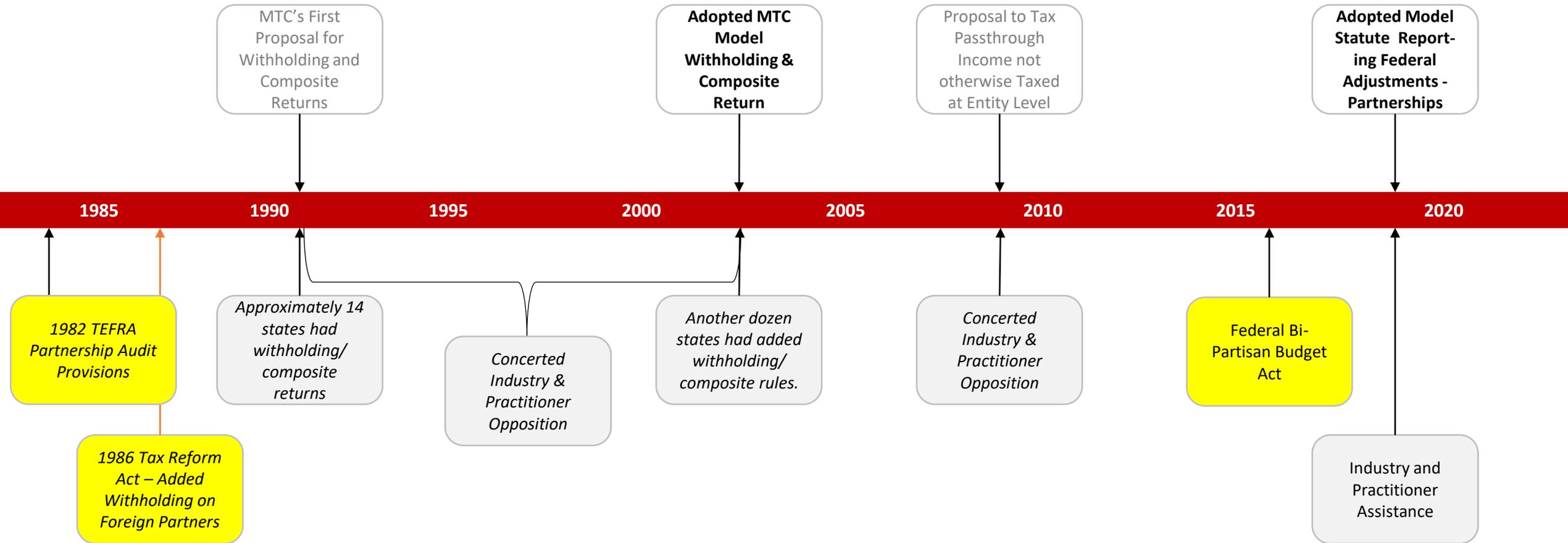
RECENT DEVELOPMENTS – DIGITAL PRODUCTS

- Digital Ad Taxes:
 - Enacted:
 - Maryland – the comptroller has issued regulations on apportioning the gross receipts from such ads derived in the state—on a “look-through” basis. Two lawsuits have been filed challenging the Maryland tax – in state and federal courts.
 - Proposed:
 - New York – proposed legislation (AB 6199/SB 4959 (2021)) – would impose a monthly excise tax on consumer data of individual collected by companies based on the total number of New York consumers whose data is collected during the period.
 - Also in New York – proposed legislation (AB 743/SB 302 (2021)) – would expand the sales tax to digital advertising services.
 - Indiana – proposed legislation (HB 1312 (2021)) would impose tax based on social media ads coupled using data from individuals living in Indiana.
 - Arkansas – proposed legislation (§ SB 558 (2021)) would impose tax on social medial platforms based on ad sales.
 - Connecticut – proposed legislation (HB 5645 (2021)) would impose tax on social media providers based on their apportioned gross receipts from advertising.
 - District of Columbia – a proposal would expand the sales tax with a special levy on charges for advertising services.
 - Louisiana – proposed legislation (HB 612) would expand the sales tax to sales of digital advertising services.
 - Texas – proposed legislation (SB 1711) – expands sales tax to cover advertising services generally

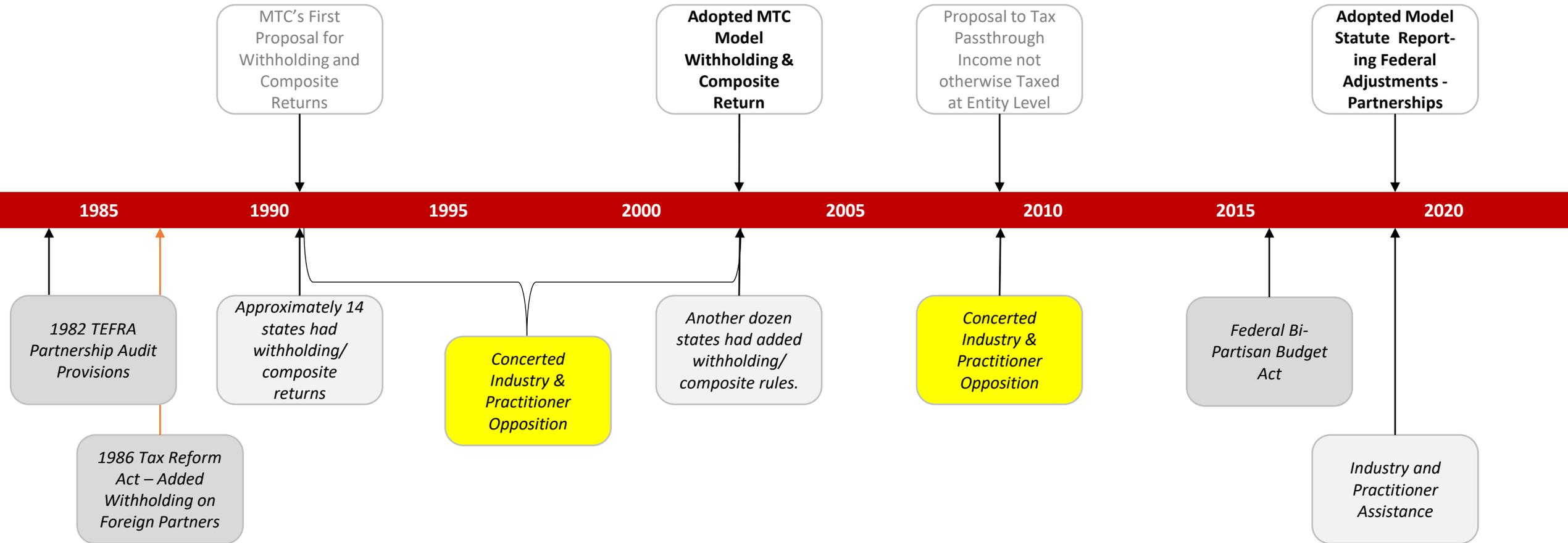
Long View – Partnership Developments



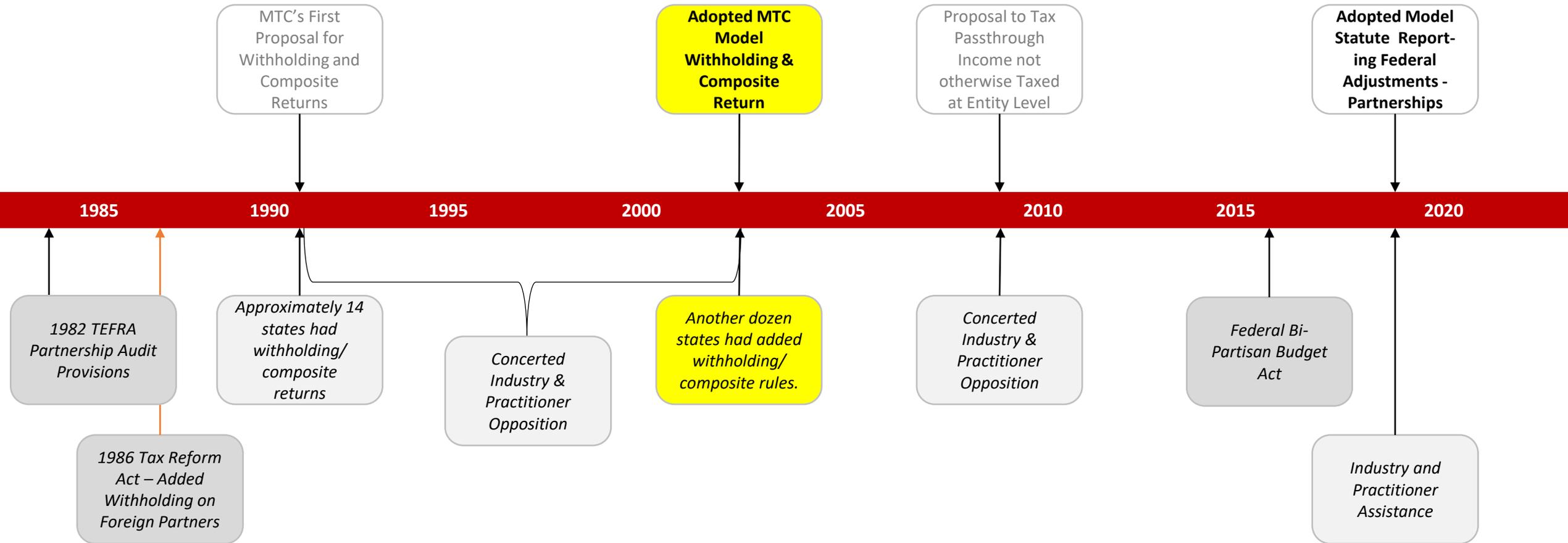
Long View – Partnership Developments



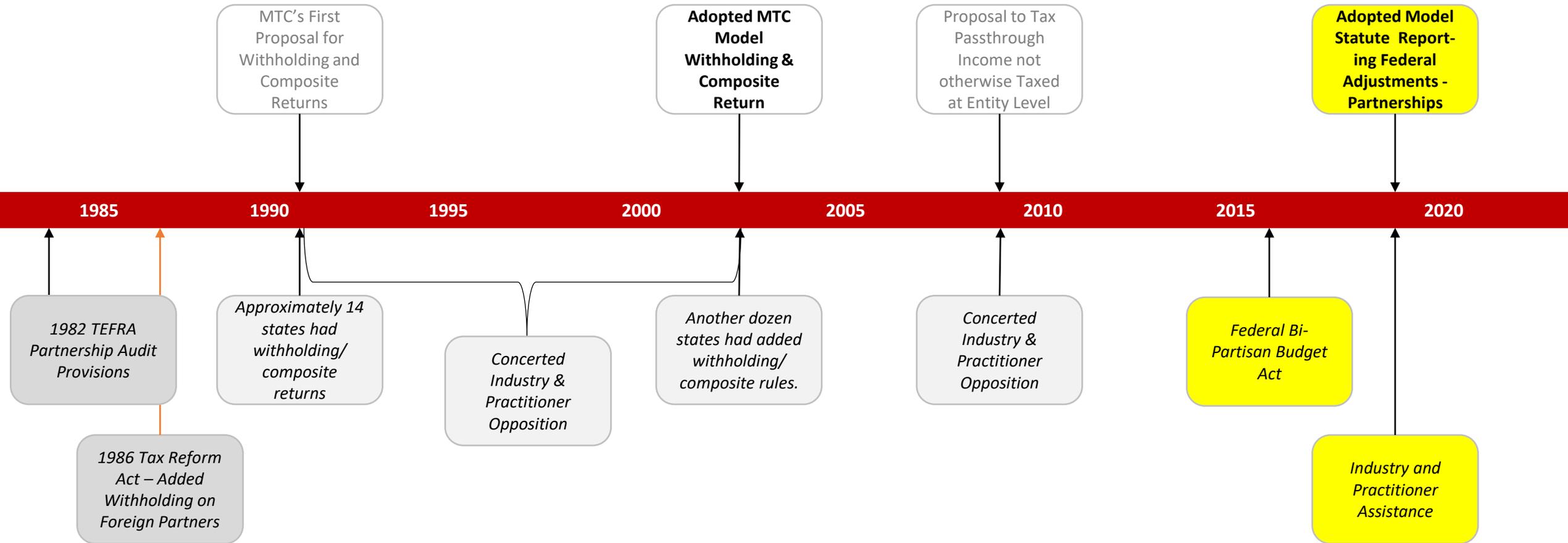
Long View – Partnership Developments



Long View – Partnership Developments



Long View – Partnership Developments

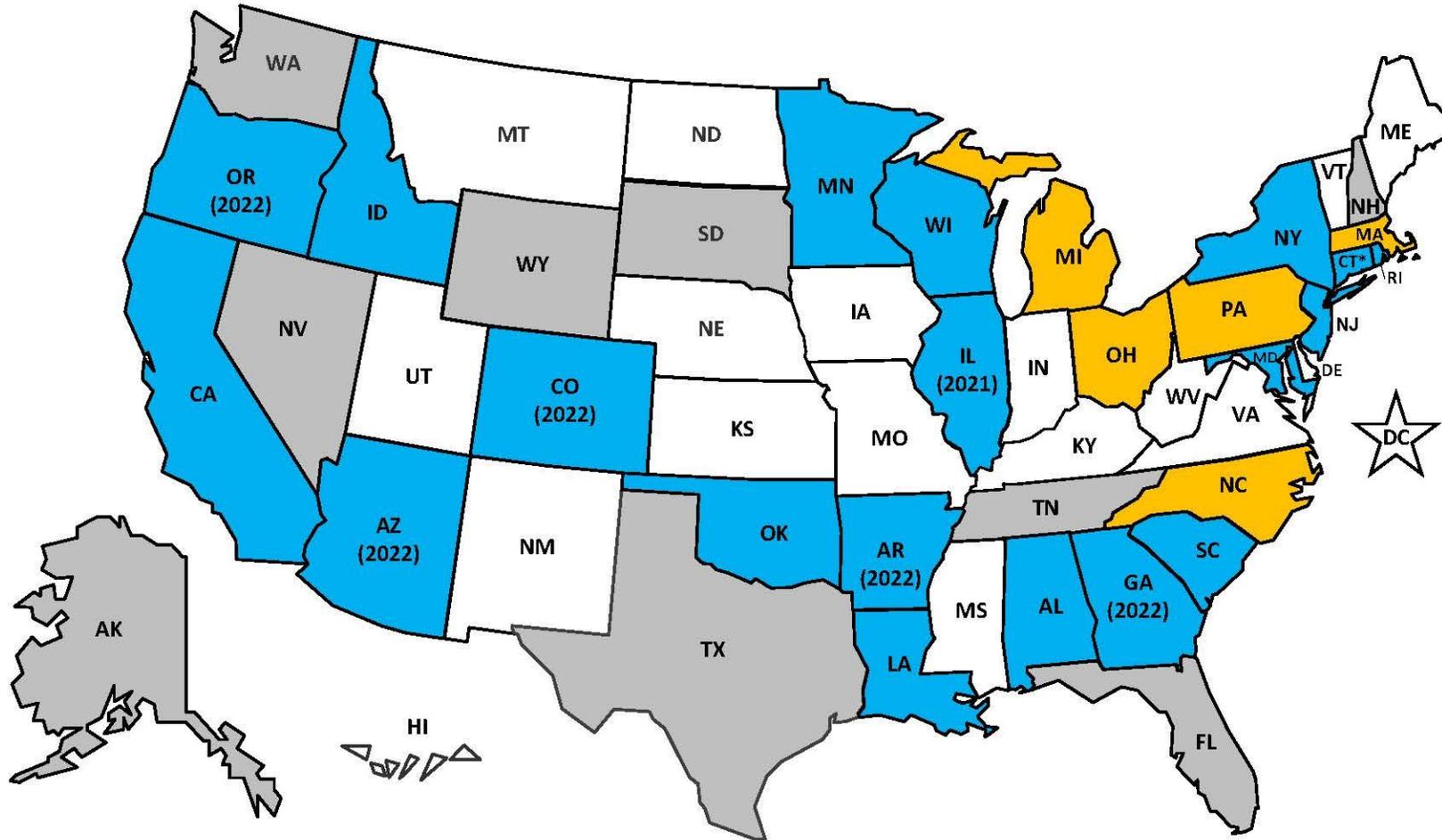


Reporting Federal Adjustments

- It appears 20 states have adopted legislation that would handle the reporting and payment of tax on federal adjustments under the new centralized partnership audit regime.
- Most of those states have follows the provisions of the MTC model (with some variation).
- One of the features of this model is that it allows the reporting and payment of tax at the partnership level.

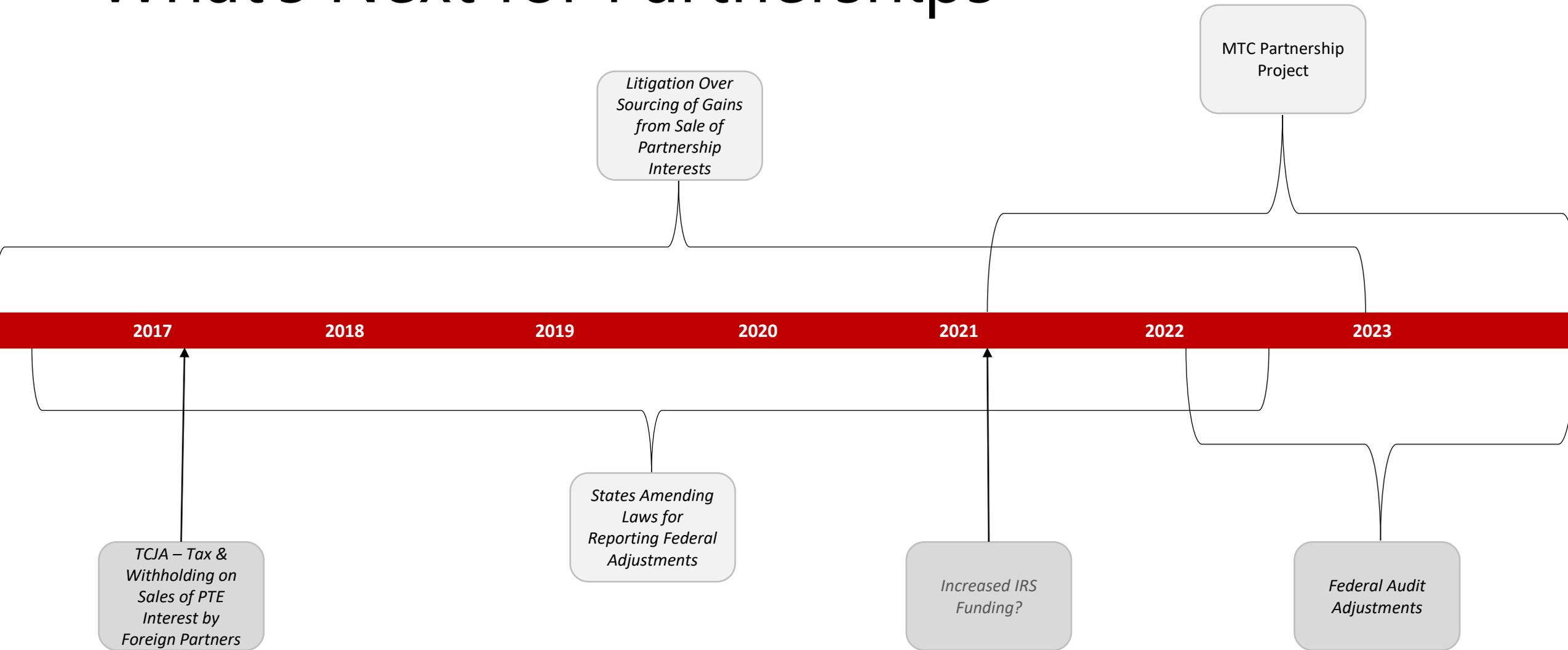
States with Adopted or Proposed Pass-Through Entity (PTE) Level Tax

As of October 8, 2021

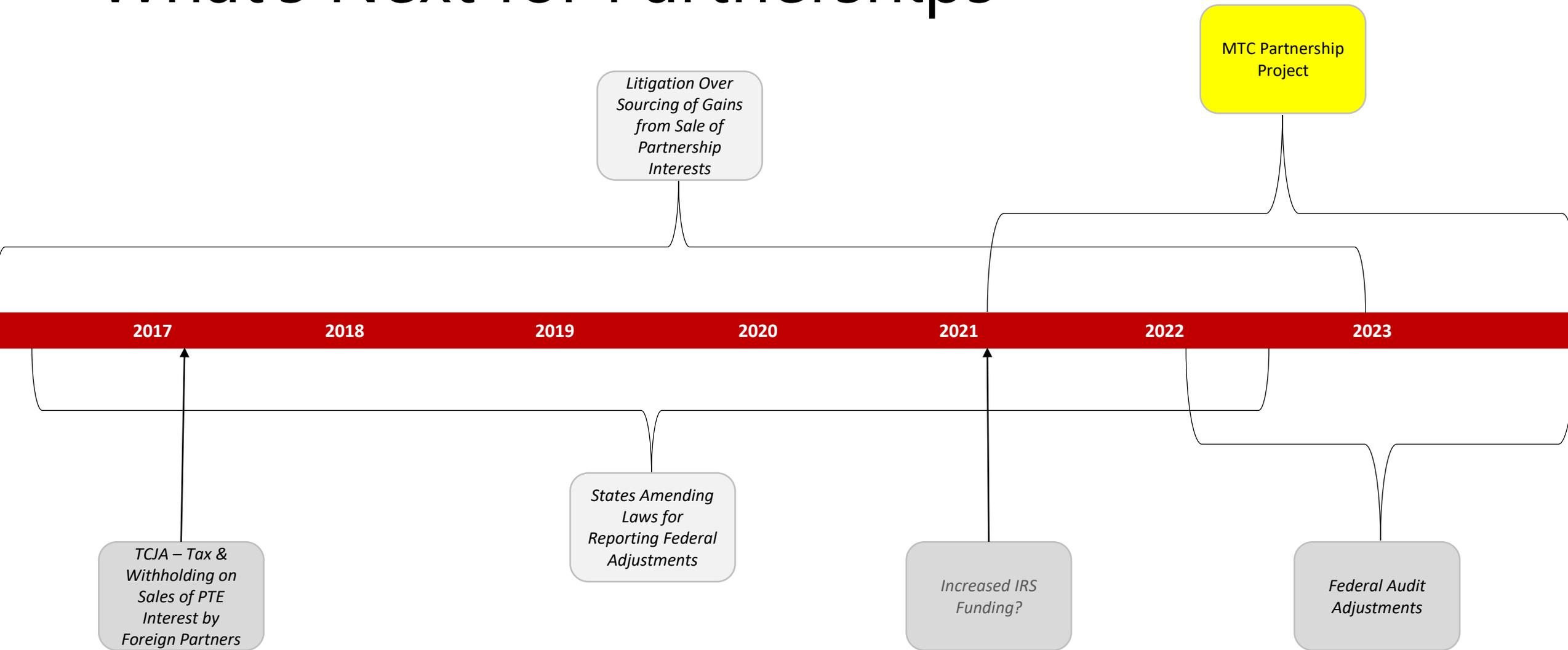


- States that enacted a PTE tax since TCJA SALT deduction limitation, effective for 2021 (or earlier) unless noted:
[AL](#), [AR¹](#), [AZ¹](#), [CO¹](#), [CT²](#), [GA¹](#), [ID](#), [IL](#), [LA](#), [MD](#), [MN](#), [NJ](#), [NY](#), [OK](#), [OR¹](#), [RI](#), [SC](#), [WI](#)
¹ Effective in 2022 or later
² Mandatory
- States with proposed PTE tax bills:
passed
[MA – H. 4009](#), vetoed by governor
[MI – HB 5376](#), first reading
[NC – S. 105](#), in reconciliation
[OH – SB 246](#), in committee
[PA – HB 1709](#), in committee
- No owner-level personal income tax on PTE income

What's Next for Partnerships



What's Next for Partnerships



Other Developments

- Mobile Workforce Legislation –
 - The MTC has updated its analysis of the mobile workforce legislative proposals and state action and this information is posted on our website home page.
 - Note that the MTC continues to believe that administrability is key to any limitation on taxing instate workers—to avoid creating unintended consequences
- Statement on P.L. 86-272 – and Factor Presence Nexus Standard
 - There continues to be interest in the MTC's revision to its statement of position on P.L. 86-272
 - We hope that as states consider that statement, they will also consider adoption of the bright-line factor presence nexus model statute.